



**BOARD OF BARBERING AND COSMETOLOGY**

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**Board of Barbering and Cosmetology  
Department of Consumer Affairs  
400 R Street  
Sacramento, CA 95814**

**MINUTES OF  
FEBRUARY 23, 2004**

**BOARD MEMBERS PRESENT:**

*Dr. Della Condon, President  
Dr. Waddell Herron, Public Member  
Kim McInnes, Professions Member  
Bonnie LaChappa, Public Member*

**BOARD MEMBERS ABSENT:**

*Angela Reddock, Public Member  
Joe Gonzalez, Vice President*

**STAFF MEMBERS PRESENT:**

*Terri Ciau, Executive Officer  
Albert Balingit, Staff Counsel  
Marion Welch, Supervising Examiner  
Hallie Fisher, Operations Manager  
Sharon Buono, Enforcement Manager  
Angelica Flores, Enforcement Analyst  
Margie Shea, Enforcement Analyst  
Thalia Singleton, Executive Assistant*

**TELECONFERENCING:**

*Richard Hedges, Public Member  
Hale Kahakai  
2405 Kalaniana'ole Avenue, PH 11  
Hilo, HI 96720*

**♦ Agenda Item #1, CALL TO ORDER**

Dr. Condon called the meeting to order at 9:15 a.m. Pacific Standard Time with the roll call. A quorum was present and notice had been sent to interested parties.

Dr. Condon welcomed Solano and Skyline Cosmetology Schools for attending the Board Meeting.

Dr. Condon stated that she was very proud to announce the Board had selected the new Executive Officer, Ms. Terri Ciau.

Dr. Condon introduced Terri Ciau, the new Executive Officer of the Board. She stated that Ms. Ciau had represented a regulatory board on national committees to review reasonable accommodation requests for a national examination, and the implementation of a new national written examination. Dr. Condon stated that she worked as a trouble-shooter to identify and resolve issues throughout the Department of Consumer Affairs.

Ms. Ciau thanked everyone and indicated that she looks forward to working with the Board, all the stakeholders and interest groups. Ms. Ciau stated that it is going to be a very fun year.

Dr. Condon stated that there are many issues that need to be worked on and resolved throughout this year and the Board is pleased to have chosen such a capable Executive Officer to work with the members of the Board.

♦ **Agenda Item #2, PRESIDENT'S REPORT**

Dr. Condon provided the Board with a report on the operations of the Board.

**Disciplinary Review Committee (DRC):**

Dr. Condon stated the DRC currently has a backlog of 1,600 cases, and the cases are of people who are contesting fines received. Dr. Condon reported staff will be providing training on March 21 and will then begin hearing the cases on March 22, 2004.

Dr. Condon asked that each member who has not signed up for the DRC committee to consider enlarging the committee; therefore, everyone should attend the upcoming training. She stated that if any of the DRC committee members were not available to attend a hearing, another member would be able to fill in since everyone would have been trained.

Dr. Condon stated that the committee is made up of Ms. Angela Reddock, Mr. Joe Gonzalez, Mr. Richard Hedges, Dr. Waddell Herron and Dr. Condon.

Ms. McInnes stated that she would like to be a DRC committee member.

**Reciprocity Licensure:**

Dr. Condon reported on the licensure for out-of-state applicants (reciprocity) where the board staff has begun the process of drafting regulatory language, which would be responding to the bill SB360. She stated the intent of the Board is to distribute the draft language and conduct meetings for input on the bill's language for reciprocity. She reported this issue may possibly be on the March Board meeting or a stand-alone meeting.

**Strategic Planning:**

Dr. Condon reported there was audit report done prior to the Board being reconstituted and the report identified many issues that need to be resolved in relation to the operation of the former Bureau (now Board). She stated strategic planning sessions would be held with the April or May Board Meetings. This will allow the Board to develop a two-year road map that will assist in incorporating priorities and the completion of the issues raised in the audit finding report.

Dr. Condon stated the audit report is an excellent window into the issues the Board need to look at to expedite testing, inspections and many other aspects of the Board's functioning. She stated the Strategic Planning sessions would also assist the Board in preparing for the Sunset Hearings. Dr. Condon reminded the Members there is so much to be done under SB 362; the Board may need to seek an extension to complete some of the review requirements.

Dr. Condon asked the Members by consensus to give Terri Ciau, Executive Officer the authority to provide the Department of General Services (DGS) with the recommendation to serve notice to the agent at the Wilshire exam facility. She stated that by giving the Executive Officer this

authority to do this, it would protect the Board from being in a situation where we are spending money that the Board doesn't have. Dr. Condon reported, currently there is a hearing going forward as to the methodology by which this testing site was acquired and whether it was appropriate.

Dr. Condon stated either a Senate or Committee Hearing is going to take place tomorrow to determine if an audit of that process is in order. She stated the Board hopes to have a favorable outcome of this hearing. She stated in the meantime, the Board must protect the Board and the Members from the personal liability that would occur for spending funds the Board doesn't have in its budget. She stated the Executive Officer would make sure that this notice was not given too early so the Board would not be without an exam site at all.

Dr. Condon requested a consensus of the Board to empower the Executive Officer to carry out this task for the Board.

Mr. Balingit suggested to Dr. Condon, rather than handling this through a concurrence, it's probably appropriate that the record reflects a motion.

Dr. Condon asked that one of the Members make a motion.

Mr. Hedges stated he was unable to hear the previous statement that was made by Mr. Balingit.

Mr. Balingit stated in order for the record to decipher the Board, he thought this item was a Board action. He stated in all probability, it's much better for the record that the Board handle this item through a Board motion rather than through concurrence; therefore, a motion by one of the Board members, a second and then a vote by the Board to give the Executive Officer this type of authority would be more appropriate.

Mr. Hedges asked if a motion was Dr. Condon's desire

Dr. Condon stated that it's important in her responsibility to protect the Board Members from potential liability, and that the Board must confer that authority on the Executive Officer.

Dr. Condon stated that it would be appropriate that the record reflect a motion.

A motion was made by Mr. Hedges to empower the Executive Director to give notice at the proper time in relation to our lease at the current Wilshire Boulevard testing site.

Dr. Herron seconded the motion.

Dr. Condon stated any member from the public could comment on this item before the Members voted on it.

There were no members from the public to come forward to comment on the item.

Mr. Balingit stated since Mr. Hedges is attending via teleconference; all votes must be by roll call.

Ms. McInnes – yes

Dr. Condon – yes

Dr. Herron – yes

Ms. LaChappa – aye

Mr. Hedges – yes.

All members were in favor of the motion.

### **Agenda Item #3, EXECUTIVE OFFICER'S REPORT**

Ms. Ciau informed the Members that since it was her first meeting, her report was not very extensive. She stated that she would be reporting on two items, #3A & 3B

#### **Budget and Expenditure Projections**

Ms. Ciau reported the current year, the Board had a one-time windfall of funds; however, this will not happen in the future for the Board, but this would provide for the Board to redirect funds to the Attorney Generals costs, which are going up as of April 2004.

#### **Audit Findings 2002**

Ms. Ciau stated it was her understanding the Board was requested to bring the audit findings forward by the Board Members. She stated, as Dr. Condon has already indicated, the Board has not made as much progress as they would have liked to due to the workload, the transition from the Bureau to the Board and other factors. She stated that the Board hopes to be able to take the audit findings and incorporate them into the strategic planning along with the other workload analysis that needs to be done.

Dr. Condon thanked Ms. Ciau for furnishing the Board with a copy of the audit findings dated February 11, 2004, which is in relation to the progress made. She stated that in going through the report it brought back to the surface the many important issues that the Board needs to address and has made some progress towards resolving the issues.

### **♦ Agenda Item #4, CONSIDERATION AND APPROVAL BOARD MEETING MINUTES OF SEPTEMBER 15 & 29, OCTOBER 26-27, DECEMBER 15, 2003 AND JANUARY 26, 2004**

Mr. Hedges requested that some changes be made to the September 15, 2003 minutes. Mr. Hedges had a change on page 7, in the middle of the page.

Mr. Hedges would like the following changed in the September 15, 2003 minutes: We were told earlier in the meeting by the Board President who went out and viewed the space. He stated there were a few grammatical errors he noticed on this page and that was all.

Dr. Condon stated that the January 26, 2004 minutes are not ready for review; therefore, they are not up for approval.

A motion was made by Dr. Condon to approve all of the minutes with the minor changes to the September 15, 2003 minutes.

The motion was seconded by Mr. Hedges to approve the all-previous minutes after making one minor change to the September 15, 2003 minutes.

A vote by roll call was done.

Ms. McInnes - aye

Dr. Condon - aye

Dr. Herron – aye

Ms. LaChappa – aye

All members were in favor.

◆ **Agenda Item #5, PROGRESS REPORT ON SAME-DAY LICENSURE**

Dr. Condon reported the agenda included two timelines, one for the pencil and paper and computer-based testing. She stated both timelines extend to June 2004. Dr. Condon asked if any of the members had any questions in relation to the timelines for returning to same day licensing.

Dr. Herron requested clarification on the timelines. He stated it appears the timelines are just sort of like trends that would be assigned to the Board's office and the Office of Examination Resources (OER).

Ms. Ciau stated the relationship is a partnership with the Office of Examination Resources on the automated system. She stated on the paper pencil portion, it's a partnership with the Office of Information Services. She stated the dates are coincidental that we're both ending up on June 1, 2004. Ms. Ciau stated that this has to do with the automated system and getting the new program under way.

Dr. Condon stated that she's having a little trouble understanding the necessity for reprogramming the computer system when all the Board is doing is changing the testing and methodology.

Dr. Condon stated she received a letter last week from an applicant who took a written exam and that the Board is giving exams daily to a student who need interpreters. She stated that she couldn't understand why it's necessary for the Board to wait until June to change the exam. Dr. Condon referred back to the previous motion, giving, 120 days within which the Board would return to same day licensure which involves giving students the written exam the same day and receiving their license the same day.

She stated if the Board has these tests and are able to give the exam to students who need interpreters and American with Disabilities Act (ADA) accommodations, then her first thought is surely the Board would not give them a test that was in any way outdated or needed any kind of structural change.

Dr. Condon expressed her concern as to why the Board couldn't make an immediate return to the same day licensing.

Dr. Condon stated this issue is a top priority for the Board. She stated the Board first gave the staff 90 days, then there was a delay, then an additional 120 days was given incorporating the time that passed at that particular point. Dr. Condon needs to understand why there will be a delay until June 2004. She stated a June 2004 timeline is not acceptable.

Ms. Ciau requested assistance from Ms. Fisher and Ms. Ferrell in responding to Dr. Condon's question.

Ms. Fisher stated the current scheduling of the clients who use interpreters or ADA accommodations, are still scheduled through Experior Assessments. She stated the candidate still receives their candidate handbook and they contact Experior directly. Experior will schedule the candidate on designated days and the Board will examine these candidates on Wednesdays once we have received the information from Experior. The Board will provide the proctors who administer the examination.

Ms. Fisher stated that when the Board switched to Experior, the exams are not cycle-based, it's a different type of scheduling all together. Therefore, the computer had to be modified at the time to accommodate the new way the exam was being administered. She stated that since the Board is going back to pencil paper, the system would need to be reprogrammed to allow the Board to physically schedule the entire examination, which is the reason for the delay.

Ms. Fisher informed the members that the BBC staff are unable to complete the reprogramming on the system, but must be completed by the Office of Information Services; therefore, this is the reason why we are able to schedule a small number of exams at our site that are paper-pencil.

Dr. Ferrell informed the Members that the process is very straightforward, and reminded the Members the interpreter exams are very small portion of the BBC's candidate pool, so this is the reason why at this time it works well to have the exams done at the sites. She stated that this process is something we would like to incorporate into the computer-based testing scheduling process again, to remove more of the burden from the Board staff.

Dr. Condon spoke on behalf of the entire Board and mentioned that a June timeline was unacceptable and that she requested the staff to bring the timeline closer to the present. Dr. Condon stated it's difficult having been an onlooker when the Board switched to computer-based testing within two weeks and that it was done without any input from the schools, people in the industry and students and other individuals affected by the change.

Ms. Fisher stated when the Board switched to computer-based testing it was more than a two-week timeframe. She stated the computer-based testing project was a priority for the DCA, so there was an effort to put the resources together so the transition would be smooth. She stated there was a two-week period from the time that the Board stopped giving the examination until the time the exams were switched to the computer based.

Ms. Fisher informed the Members that the Board staff is at the mercy of the Department's Office of Information Services with this timeframe. She stated the staff could only operate within the

parameters of the database. She stated the Board doesn't have the ability to schedule the examinations without having the programming done from the Office of Information Services.

Dr. Condon stated that perhaps the Board can convince the Department the many hundreds of cosmetologists who are awaiting to go to work is a priority, and that maybe the Department could place some of the priority towards programming the computer system so people can go to work. She stated that she would like to see that reprogramming the computer system made a priority.

Dr. Condon reported the staff is working on bringing back pencil and paper testing or computerized testing. She stated that the Board has not taken a position that negates either issue at this point.

Dr. Condon asked the Board if they wanted staff to research the options of going out to bid for computer-based testing.

She stated the Board should consider giving another company an option of coming forward with a quicker timeline on the Board's examination.

Mr. Hedges stated since NIC has shown interest in bidding on the testing then the Board should go out to bid. He stated competition often works to the benefit of moving things along.

Dr. Herron stated the Board needs to view all options that are made available to the Board to mitigate the problem that's addressed.

Dr. Condon agrees there should be a competitive bidding process. She stated this encourages economic savings and she agrees with the cutting back on government costs.

Mr. Ciau asked Dr. Condon if the Board wanted the staff to prepare timelines that it would take if the Board were to go out to bid for a contract regarding returning back to the pencil and paper exams.

Dr. Condon requested the staff and Executive Officer to research and prepares a timeline to do an RFP for computer-based testing. She requested to have the information for the March Board meeting.

♦ **Agenda Item #6, PRESENTATION BY THE DEPARTMENT OF HEALTH SERVICES ON  
CHEMICAL EXPOSURE IN THE COSMETOLOGY PROFESSION**

Dr. Condon reported the Department of Health Services was scheduled to give the Board a presentation on a study of health issues related to the cosmetology profession. She reported that Health Services would not be giving the presentation.

Dr. Condon indicated she hoped the Department of Health Service would come to a future meeting and give the presentation, because she thinks this information would be very helpful for members in the profession.

♦ **Agenda Item #7, REVIEW AND APPROVAL OF THE INTRADEPARTMENTAL AGENCY CONTRACT FOR THE DEVELOPMENT & MAINTENANCE OF THE BOARD'S WEB SITE**

Dr. Condon referred this item to the Board's Executive Officer for comment.

Ms. Ciau informed the routine for the Department and Board's and Bureau's to enter into an interagency agreement for the maintenance of the Board's web site. This agreement also funds staff in the Office of Information Services to provide the services.

Ms. Ciau assured Dr. Condon that the agreement was routine and there was nothing unusual.

Ms. Ciau requested the Board to approve the agreement for \$6,000.00.

A motion was made by Ms. LaChappa to approve the Interdepartmental Agency Contract for the Maintenance of the Board's Web Site.

Dr. Herron seconded the motion

A vote by roll call was done.

Ms. McInnes – Aye

Dr. Condon – Aye

Dr. Herron – Aye

Ms. LaChappa – Aye

Mr. Hedges – Aye

All members were in favor and the motion was passed

David Lange, Skyline College requested the meeting minutes be placed on the Board's web site.

Ms. Ciau informed Mr. Lange the minutes could not be placed on the Board's web site until the Board has approved them.

Ms. Ciau stated the minutes that have been approved would be posted on the Board's web site.

♦ **Agenda Item #8, DISCUSSION & ACTION REGARDING REVIEW OF EXAMINATION APPEALS**

Ms. Ciau reported that the Board staff is requesting the Board to consider either delegating approval of examination appeals to the Executive Officer or to designate one Board Member to work with the Executive Officer in the approval process.

Dr. Herron requested clarification on what the duties would be.



Ms. Ciau reported an applicant would submit an appeal if they feel they should have passed the exam.

Dr. Condon asked how many appeals were pending.

Ms. Welch reported the Board currently has 75 applicants that have submitted appeals. She stated the applicants are calling regularly to inquire when they will receive a response.

Dr. Condon wanted to know what the most common reasons for an applicant to appeal their exam score.

Ms. Welch stated most candidates felt the areas where they were examined, were not scored correctly. She stated the area of most concern was the practical portion of the exam.

Ms. Welch stated the written exam appeals are easy to resolve, because the Board is working with Experior and we are told what happens in the exams.

Dr. Herron was concerned that the appeals were due to time issues.

Ms. Welch stated that it is a time issue, because the candidate have 15 days to appeal their exam and since we returned back to a Board, some of the appeals go as far back as September 2003. She stated that some candidates have already gone back and took their exam and passed.

Ms. Welch stated that some appeals are a case of the candidate's word against the examiner word.

Dr. Condon stated if the documentation is there then the exam failure is upheld.

Ms. Welch stated Yes.

Dr. Condon wanted to know if any of the appeals are based on a candidate who came to take the examination without the proper Identification or if the model doesn't have the proper ID.

Ms. Welch stated the appeals are based upon what happened during the examination.

Dr. Condon would like the Board to look into creating a stand-by list for people to take their exam if candidates don't show up.

Ms. Welch suggested the staff overbook the exam sites. She suggested the staff overbook daily, which will help a lot.

Dr. Condon asked if students would be turned away from the exam if overbooked, if all scheduled candidates showed up to the exam.

Ms. Welch stated that no candidate would be turned away.

Dr. Condon wanted to know how the appeal process is actually carried out. She wanted to know if students are allowed to come into the office or is it done via paperwork?

Ms. Welch explained an appeal must be submitted to the Board in writing.

Dr. Condon wanted to know under what circumstances has resulted in the issuance of a license after a student has appealed the exam.

Dr. Condon stated she is sensitive about the examiners being involved in the appeal process, since they are the person administering the exam.

Dr. Condon wanted to know if Ms. Welch ever reviews the examiners?

Ms. Welch stated that she does review the examiners and conducts training for the examiners.

Dr. Condon suggested the Member who assists in reviewing the appeals, should have school experience.

Mr. Hedges inquired as to how many people would be needed to assist with the appeals.

Dr. Condon stated only one person would be needed with experience and possibly school experience.

Dr. Condon asked Ms. McInnes how she would feel about assisting with the exam appeals.

Ms. McInnes stated she would be willing to assist the Executive Officer.

Dr. Condon made a motion to have Ms. McInnes assist the Executive Officer on reviewing examination appeals. Mr. Hedges seconded the motion.

A roll call vote was done

Dr. Condon- Aye

Dr. Herron – Aye

Ms. LaChappa

Ms. McInnes

Mr. Hedges

All members were in favor.

♦ **Agenda Item #9, INSPECTION UNIT REPORT**

Mr. Jacobs referred the member to their inspection binder they received a few months ago. The binder holds the requirements for the inspectors, how many inspections have been done in each particular area.

Dr. Condon reported she went on a ride-along, and she was very impressed on how professional the inspector was. She stated the inspector was conscious when she entered the salon, not to disrupt the business, but still focused and concerned for the consumer. She stated the inspector would also educate the people when she could.

Dr. Condon stated wonders about the requirement for law enforcement experience for inspectors.

Mr. Jacobs stated the inspectors don't need law enforcement background and he believes that he is the only inspector with a law enforcement background. He stated some of the Inspectors have been working as inspectors with other offices before they came to the Board.

Dr. Condon stated there has been some discussion within the industry that if the requirements include investigative background were changed then there would be some benefit for former instructor's to become inspector's. She also wanted to know how difficult would it be to get a job qualification changed.

Mr. Jacobs stated this process would be very time consuming.

Ms. Ciau stated when the Board needs a case investigated, that the Board would work with the Department of Consumer Affairs, Division of Investigations (DOI).

Mr. Jacobs stated yes. He indicated that last year the Board started doing more internal investigative reports because of DOI's heavy workload.

Ms. Ciau asked Mr. Jacobs if the Board has invited DOI to attend our inspector's meetings, and to conduct training for the Board's Inspector's.

Mr. Jacobs stated the DOI has provided training for the Board's Inspector's, and they have also had training from the Attorney General's Office on report writing.

Dr. Condon wanted to know if a teacher wanted to become an inspector, what type of training would they receive in order to make them eligible and do they need to have investigative experience.

Mr. Jacobs stated they only need an AA or two years experience in criminal justice and report writing.

Dr. Condon stated the Board should spread the word, so people who qualify can apply to become an inspector.

Dr. Condon stated when she went on the ride-along she became more sensitive to the potential conflict that can take place when an examiner is out in the field inspecting the establishments.

Mr. Jacobs stated the inspector's generally travel alone and three of the Board's inspector's have been attacked. He stated there is a gentleman currently serving time in jail for attacking one of the inspectors.

Mr. Jacobs stated the Board has had cars vandalized, tires have been punctured, and the paint scratched. The Board has had to pay for all the repairs out of our budget.

Dr. Condon reported that when she went on the ride-along, three unlicensed individuals were working in salons and this was a bit alarming.

Dr. Condon wanted to know what was currently being done in relation to the audit report. She wanted to know what was being done to make the improvements to address the deficiencies.

Mr. Jacobs stated that he has tried to get approval for 35 more inspectors' positions for the last four years. He stated one of the issues mentioned is the rule that a shop must be inspected within 90 days. He reported the new Executive Officer is currently addressing this issue.

Dr. Condon stated she is concerned about the impact the technology can have on the inspection unit. She wanted to know if there was anything to be done in relation to technology to help with the inspections being completed.

Mr. Jacobs reported the BBC is blending into technology where it would be like parcel post. However, he stated the problem is the Inspector's must leave a copy of the inspection report with the individual once they are cited.

Dr. Condon stated this would be a very progressive step toward the most effective use of staff cutting down time. She stated she would see the technology as being very helpful to staff in the work that currently being done.

Dr. Condon stated that she supports the staff in the work that has been done.

Dr. Herron stated he was also in support of staffs' work.

♦ **Agenda Item #10, PROGRESS ON LOCATING AN APPROPRIATE SOUTHERN CALIFORNIA EXAMINATION SITE**

Dr. Condon reported the Board asked the Executive Officer to ask Department of General Services (DGS) to consider renegotiations of the current lease at the Board's Wilshire exam site.

Dr. Condon stated the landlord is willing to give the Board increased savings at the Wilshire location.

Ms. Ciau reported she pursued the request to have the lease at the Wilshire examination site continued and potentially expanded. She reported the request went to DGS, who in turn stated this request was an internal request, which needed to go through the Department of Consumer Affairs (DCA).

Ms. Ciau referred the Members to a memorandum from the DCA, which indicated this request would not be fiscally feasible to pursue.

Mr. Gary Whiteman, Chief of the Office of Administrative Services, Department of Consumer Affairs, reported he's been working with Ms. Ciau and that request has been made to RESDA to

resume site locations and an extension of the lease at the Wilshire exam site. He indicated RESDE responded that the direction must come from DCA, not the Board. Ms. Ciaue requested Mr. White to expand on that request.

Mr. Whiteman informed the Board that he legally cannot go forward with the Board's request because he has been advised there is an existing lease in place, a legal and binding lease on the BBC. He informed the Board there's a process that must be followed. Once he makes an evaluation, a form 9 must be completed and forwarded to Department of Finance and he can only move forward with this if it's fiscally prudent.

Dr. Condon reported the decision was made in the Board's opinion outside of the appropriate parameters of the Business and Professions Code. She stated this was not with the consent and authority of the Board that the lease agreement was entered into. She stated the members of the Board believe this was done inappropriately.

She reported the Board has asked for a Legislative audit to be completed on the relocating of the Wilshire exam site. She stated the Board feels a bad decision was made to move the Wilshire exam site. She indicated this agreement was purposefully kept from the Board when they would have been in a position to discuss the appropriateness of the new exam facility.

Dr. Condon reported the Board feels relocating the exam site are not a responsible expenditure of the State's money.

Dr. Condon reported the Board is moving from a \$14,000 a month site to a \$25,000 a month site, which does not have adequate parking. She reported there has been a reduction in rent from \$19,000 a month down to \$14,000 a month at the Wilshire site. She stated the move is not in the interest of the Board.

Dr. Condon reported the Board understands the legality of a lease and is not advocating interference with the lease, if it's found to be legal. She stated the Board has serious concerns regarding the lease and this is why they requested an audit to be done.

Dr. Condon stated the lease agreement says the building must be inhabitable by March and it's not. Actually, it's a long way from being habitable. She stated the Board would be lucky if the building is ready by September. She reported that she's gotten involved with this issue, because of concerns with expenditures.

Dr. Condon reported she understood the lease would become invalid if the Board would not be able to move in the building by March. She stated that every avenue is pursued.

Dr. Condon stated that if they are violating the original lease agreement that would give the Board a way out of the agreement. The Board should take advantage of the opportunity for the sake of the financial condition of the State. She stated if there's a breach of the lease, then the Board should go another direction.

Ms. Johnson, Deputy Director, Legal Affairs, Department of Consumer Affairs, stated that DCA is aware the Board has taken a position that the lease is invalid, and that the lease was entered into appropriately.

Ms. Johnson stated the lease was entered into pursuant to authorization given by the Board's Interim Executive Officer duly authorized under the statute. She referred the Members to the statute and code pertaining to the Interim Officer's authorization and reminded them this person was appointed on April 16, 2003.

Mr. Johnson reported the Interim Executive Officer had the authority to act on behalf of the Board, because there wasn't a quorum until August 11, 2003. She reported the member could not act prior to the time you were sworn in, even if you had been appointed.

Ms. Johnson stated on September 15, 2003 Mr. Albert Balingit, Legal Counsel informed the Board that the lease was valid, and the Board was responsible for it because it was authorized by the Interim Executive Officer. Ms. Anita Scuri also informed the Board that they entered into a valid lease and would be responsible for it.

Ms. Johnson stated Mr. Balingit informed the Board of liability if action contrary to the intent was carried out contrary to the position of the State. She stated if the lease was terminated the damages would be incurred by the Board.

Ms. Johnson reported the DCA received written authorization from the Interim Executive Officer prior to the Board's authorization by statute and prior to the Board being sworn in. She stated the action of the Interim Executive Officer was binding on the Board as an agent.

Dr. Condon stated that the Board appreciated the information that Ms. Johnson was sharing, but requested Ms. Johnson to not use the lecture tone with them.

Ms. Johnson reported it's important the Board understands all the action that were taken by the Department were simply consistent with the process and the Department followed an action that was started ten years ago.

Ms. Johnson reported the Department has inquired with the Attorney General's Office with respect to the validity of the lease; however, no response has not been received.

Ms. Johnson stated the Department has been advised by the Attorney General's Office that if this matter goes to litigation they will support the Department of Consumer Affairs, Department of General Services and the Department of Finance with regards to the validity of the lease.

Mr. Johnson stated she wants the Board to have access to every aspect of the information they will need when a decision is made whether they move forward with the litigation process.

Dr. Condon stated the Board would appreciate any documentation Ms. Johnson would share with the Board. She stated the Board wanted to know why on the very day they were seated, the lease signed by the Interim Executive Officer and it appears to be inappropriate. She stated she was sure Ms. Johnson would not negate the Board right to ask the serious questions as to why this was withheld from the Board.

Dr. Condon expressed her concern with obligating a new Board to a 15-year obligation that drastically affects its future was not appropriate and the Board is pursuing this issue. She stated this is called a Legislative Audit to determine why this happened and who the parties were and how the State Legislature can make sure this does not happen again.

Dr. Condon stated she doesn't want to negate any opportunity for an appropriate and legal out of this lease that the Board not hesitates to take it because the facility is not appropriate for the Board's testing. She stated if there is something the Board must do, they will do it. She stated the Board is scheduled to move into a building that will go up to \$35,000 a month and leaving a \$14,000 a month building doesn't seem like a prudent decision.

Ms. Johnson stated the DCA is here to provide the Board with any information to assist the Board in moving forward in making a decision to do what is right.

Dr. Condon thanked Ms Johnson for providing the information.

♦ **Agenda Item #11, AGENDA ITEMS FOR NEXT MEETING**

1. Report on RFP timelines for Computer-Based Testing
2. Report from Legal regarding Section 480 of the B&P Code
3. Progress Report on Same-Day Licensure
4. Report on the Processing Times for Licensing and Examinations
5. Discussion on the Occupational Analysis for Cosmetologists
6. Draft Regulatory Language for Reciprocity Licensure

♦ **Agenda Item #12, PUBLIC COMMENT**

Mr. Fred Jones, Professional Beauty Federation of California stated the PBFC's opinion that if an apprentice after 3200 hours of being on the job in a salon finishes the program, the same apprentice is not a danger to consumers and should immediately go to work in a salon. He stated these apprentices are not a danger to consumers. He stated is there's a concern on the curriculum and the person at the schools.

Mr. Jones' concern is will the new mandate to go back to same-day licensure will merely cut off a few weeks of the current six-to-eight month delay for testing.

Mr. Jones wanted to know what the failure rate is for students who take the exam for the first time, whether it's the practical or written portion. Out of State licensure and students going to work immediately after graduating from cosmetology school or the apprentice program should be the Board's focus.

Ms. Yvonne Henry, Instructor, Academy of Aesthetic stated the Board should not discontinue the Cosmetology Instructor's licenses. She stated being an instructor is not enough to educate, but it's important. Ms. Henry urged the Board to continue with the Cosmetology Instructor's licenses.

Dr. Condon reported there is legislation in place, which will discontinue Instructor's licenses in 2005, unless legislation went forward to maintain the license.

Ms. Ciau reported the intent of the Sunset Committee is to review, determine and make recommendation if Instructor's licenses would be continued. With the transition, the Board has not had an opportunity to review the legislation. She stated the Board might request an extension, to allow them to be reviewed.

Ms. Kathleen Gagnier, Skyline Cosmetology College, wanted to know who is responsible from a legal perspective for defending or addressing any breach of contract and what kind of support can the industry expect on the issue of who's responsible.

Mr. Balingit reported the Attorney General's Office normally represents the Board.

Ms. Johnson stated the position of the lease if determined after it's reviewed an everything is taken into consideration. If there is a breach, then the State would handle this. The Board would not have to seek outside counsel. She stated if there is a breach of this lease and there is a term not met in accordance with the lease, then the State would pursue that and it would be on the behalf of the General Services.

Ms. Gagnier was concerned how vigorously would the Department address the breach of the lease.

Ms. Johnson stated that it must be determined if there was a breach of the lease and they want to make sure the terms of the lease are adhered to. She stated the terms of the agreement must be looked at.

Ms. Dee Dee Carlson, San Francisco Institute of Aesthetics and Cosmetology stated the computerized testing is very good for the students. She stated that on occasion they have received a letter from Experior the following day after taking the exam. She stated her students are very comfortable with taking the exam and the staff at experior is very helpful.

She stated the students can go to a lot of different sites to take the exams and when they get to the exam sites there are a lot of computers available. She stated there is a larger challenge with getting into the exam with same-day testing because there is a larger backlog with getting people through the system.

Ms. Carlson suggested having the students take their written portion of the exam first since there is such a backlog in getting scheduled for the practical exam.

Ms. Carlson stated the Board should consider increasing the renewal fees for people who have been working for a while.

Dr. Condon stated the wouldn't be opposed to a small increase if all the money could be put toward inspections, licensing, examinations, and the hiring of more examiners to conduct the exams.

Dr. Condon stated Ms. Ciau is doing a very careful review of the workload and the paper flow and is looking at ways in which the process can be speeded up.

Dr. Ferrell urged the Board to explore alternatives, but want to remind the Board and staff of the current contract conditions that are in place. She wanted to remind the Board of the Master Service Agreement that is in place with Experior Assessments.

Dr. Ferrell is concerned about the timeline proposed with an implementation date in June to go back to paper and pencil.



Mr. Birdie, Director of Education, Rosemead Beauty School, stated the majority of his student like computer-based testing. He stated the service his students have received from the vendor has been very positive.

He has students who have taken the practical exam in October and still have not been scheduled for their written exam. He stated he could never get through the telephone to speak with anyone at the Board regarding the scheduling delays.

Mr. Birdie stated his students are waiting about eight weeks to get into the written exam.

Dr. Condon urged Mr. Birdie to speak with Ms. Ciau regarding the delays in processing the applicants and the experience of not being able to get through on the telephone.

Mr. Jones is concerned about a student going through the application process and when he/she is ready to take the exam they are due to their past criminal history. Mr. Jones stated persons criminal history should be checked before he/she a lot of money and time. He stated there should be a better and faster way to check a person's background.

Mr. Hedges stated he would appreciate seeing some interest in what Mr. Jones expresses regarding person criminal convictions.

Mr. Balingit stated he would prepare some information for the next meeting regarding what the Board can do to speed up the process on obtaining persons criminal history.

♦ **Agenda Item #13, PETITION FOR REINSTATEMENTS**

**REINSTATEMENTS**

Jose Huizar  
Anthony L. Allen

**CLOSED SESSION**

- **Agenda Item #14. CLOSED SESSION ON REINSTATEMENTS AND DISCIPLINARY DECISIONS [Closed pursuant to Government Code Section 11126]**

**OPEN SESSION**

- **Agenda Item #15, Adjournment**

The meeting was adjourned at 3:30 p.m.